

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DATE: December 2, 2014

**JUDGE
K. Nicole Mitchell**

Law Clerk: Tim Rawson

**Courtroom Deputy: Lisa Hardwick
Court Reporter: Jill McFadden**

**SMARTFLASH LLC ET AL
V
APPLE INC., ET AL**

CIVIL ACTION NO: 6:13CV447

**SMARTFLASH LLC ET AL
V
SAMSUNG ELECTRONICS CO. LTD ET AL**

CIVIL ACTION NO. 6:13CV448

**DISPOSITIVE/DAUBERT MOTION
HEARING**

ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR DEFENDANTS

SEE SIGN-IN SHEETS

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 8:59 a.m.

ADJOURN: 4:42 p.m.

TIME:	MINUTES:
8:59 am	Case Called. Appearances made. (See Attorney Sign-In Sheets)
9:03 am	Defendant Apple attorney Kevin. Post stated to the Court that the parties had come to an agreement in the order the motions would be argued. [Clerk's Note: Motions that are in bold are identical motions filed in the related case 6:13cv448]
9:04 am	Defendant Samsung/HTC attorney Charles Verhoeven began argument on Defendants' [266] Motion for Summary Judgment of Invalidity Pursuant to 35 U.S.C. 101. [Motion at DE 320 in 6:13cv448] Common business methods are not inventions and therefore are not patentable under 35 U.S.C. 101.
9:44 am	Bench Conference called regarding a slide that contains confidential material and how that information can be presented in argument without having to seal the courtroom.
9:49 am	Bench Conference concludes. The Court ruled that the slide would not be shown. Mr. Verhoeven continued his argument on the [266] Motion.

DAVID J. MALAND, CLERK

FILED 12/2/2014

BY: Lisa Hardwick, Courtroom Deputy

TIME:	MINUTES:
9:57 am	Response by Plaintiffs' attorney John Summers.
10:22 am	Response by Mr. Verhoeven.
10:26 am	Response by Mr. Summers.
10:31 pm	COURT RECESSED. After the recess the Court will talk to the parties concerned regarding the presentment of confidential information and the sealing of the courtroom.
10:52 am	COURT RESUMED. Defendant Samsung attorney Allen Gardner addressed the Court regarding sealing of the courtroom and issues regarding the protective order and arguing sealed motions. Mr. Gardner stated that the parties had resolved to hand documents with confidential information to the Court without being shown onscreen. Response to Mr. Gardner's comments regarding the protective order by Plaintiff's attorneys Jason Cassady and Brad Caldwell.
11:02 am	Remarks from Defendant Samsung/HTC attorney Melissa Bailey regarding confidentiality and any potential harm. There is no basis to seal the courtroom. It's a symptom of a larger problem and maybe the issue should be briefed.
11:05 am	The Court advised the parties to move on. When the motion in question is ready to be argued, the courtroom will be sealed. The parties can brief the underlying issue if necessary.
11:08 am	Mr. Summers continued argument on the [266] Motion. Response by Mr. Verhoeven.
11:14 am	Response by Defendant Apple attorney Ching-Lee Fukuda on the [266] Motion. Response by Mr. Summers.
11:17 am	The parties moved on and selected the next motion for argument. Mr. Caldwell began argument on Smartflash's [277] Motion to Strike Portions of the Rebuttal Expert Report of Anthony Wechselberger. The portions that should be stricken involve never before disclosed non-infringing alternatives.
11:42 am	Response by Mr. Post. Mr. Wechselberger's report is not improper rebuttal.
11:52 am	Response by Mr. Caldwell.
11:57 am	Response by Mr. Post.
12:02 pm	Response by Mr. Caldwell.
12:04 pm	COURT RECESSED. The Court advised the parties of the time limits to present motions and advised the parties to meet and confer to prioritize the motions for presentment.
1:18 pm	COURT RESUMED. Mr. Verhoeven stated the parties had reached an agreement on time limits and which motions to be presented. Mr. Cassady stated that he and Ms. Bailey had come to an agreement re whether the courtroom should be sealed. Counsel announced that the parties in the courtroom were either in-house counsel or case assigned counsel and that the issues to be presented would not involve needing to seal the courtroom.
1:21 pm	Smartflash attorney Justin Nemunaitis argued the next motion, Plaintiffs' [276] Limited Motion to Strike the Expert Report of Dr. Steven Becker.
1:34 pm	Response by Defendant Apple attorney James Batchelder.
1:45 pm	Response by Mr. Nemunaitis.

TIME:	MINUTES:
1:49 pm	Mr. Verhoeven argued the next motion, Defendants' [278] Motion to Exclude Expert Opinion Testimony from Plaintiffs' Technical Expert Dr. Mark Jones. [Motion at DE 331 in 6:13cv448] Dr. Jones's technical opinion is beyond his area of expertise.
2:00 pm	Response by Smartflash attorney Austin Curry. Dr. Jones' technical opinions are within his area of expertise and his analysis will be helpful to a jury.
2:20 pm	Response by Mr. Verhoeven.
2:25 pm	Response by Mr. Curry.
2:29 pm	Mr. Verhoeven argues the next motion, Defendants' [280] Motion to Exclude Expert Opinion Testimony Related to Survey's Pursuant to Federal Rules of Evidence 403 and 702. [Motion at DE 330 in 6:13cv448] The surveys were not consistent with the requirements and standards as set out in <i>LaserDynamics</i> .
2:38 pm	Response by Smartflash attorney Jason Cassady. Mr. Cassady stated the [279] Motion to Exclude Robert Mills Expert Opinion Testimony Pursuant to Federal Rules of Evidence 403 and 702 was related and included this motion in his argument to the [280] Motion. Dr. Wecker's survey methodology is consistent with reliable practices and should be admitted.
3:09 pm	Response by Mr. Verhoeven.
3:16 pm	Response by Mr. Cassady.
3:18 pm	COURT RECESSED
3:35 pm	COURT RESUMED.
3:36 pm	Mr. Batchelder argued Defendants' [279] Motion to Exclude Robert Mills Expert Opinion Testimony Pursuant to Federal Rules of Evidence 403 and 702 [briefly touched on by Mr. Cassady in his argument re the expert opinion of Dr. Wecker]. [Motion at DE 329 in 6:13cv448] Mr. Mills' royalty analysis is flawed based on his reliance on flawed surveys and irrelevant information and should be excluded.
3:50 pm	Response by Mr. Cassady.
3:37 pm	Response by Mr. Batchelder
3:59 pm	Response by Mr. Cassady and Mr. Curry.
4:01 pm	Mr. Caldwell argued a non-dispositive motion filed on 11/14/14: Smartflash's [317] Motion to Enforce Compliance with 02 Micro, Or In The Alternative, to Resolve Manufactured Claim Construction Disputes That Defendants Intend to Argue to the Jury. [Motion at DE 363 in 6:13cv448]
4:16 pm	Response by Ms. Fukuda.
4:30 pm	Response by Mr. Caldwell.
4:34 pm	The Court stated that she was hearing new argument and will give the parties time to brief the claim construction issue.
4:35 pm	Mr. Caldwell stated the Defendants should file their brief first and the Plaintiffs will then file their response.

[illegible]